

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE:)
AREDIA and ZOMETA PRODUCTS)
LIABILITY LITIGATION) NO. 3-06-MD-1760
This Document Relates To Case Number:) JUDGE CAMPBELL
03-06-0519 (Czernowski))

ORDER

Pending before the Court are a Report and Recommendation of the Magistrate Judge (Docket No. 6763), Objections filed by the Plaintiff (Docket No. 6850), and a Response filed by Defendant (Docket No. 6906).

Pursuant to 28 U.S.C. § 636(b)(1), Fed. R. Civ. P. 72(b)(3) and Local Rule 72.03(b)(3), the Court has reviewed *de novo* the Report and Recommendation, the Objections, and the file. The Report and Recommendation is rejected.

The Magistrate Judge found that sufficient prior warning was given to Plaintiff's counsel in the Case Management Order ("CMO") and through Rule 25(a)(1), and the Court disagrees. The Sixth Circuit has repeatedly reversed district courts for sanctioning parties without warning that such sanctions could result. *See, e.g., Tatum v. Novartis Pharmaceuticals Corp.*, 2013 WL 2244634 at * 2 (May 21, 2013); *Schafer v. City of Defiance Police Dept.*, 529 F.3d 731, 737-38 (6th Cir. 2008); *Carthon v. Central State University*, 290 F.R.D. 83, 87 (S.D. Ohio 2013).

There was no warning in this specific case that failure to comply with the CMO and Federal Rules concerning substitution of parties could result in dismissal of the entire case.

Accordingly, the Report and Recommendation is rejected. Plaintiff's Motion for Provisional Substitution (Docket No. 6431) is GRANTED, and Defendant's Motion to Dismiss (Docket No.

6498) is DENIED. Plaintiff and Plaintiff's attorney are warned that any future failure to comply with the CMO and Federal Rules may result in dismissal of this entire case.

IT IS SO ORDERED.



TODD J. CAMPBELL
UNITED STATES DISTRICT JUDGE